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334, 110 N. Y. Supp. 611; *Pinkerton v. Sargent*, 102 Mass. 568. This right does not survive her death and is not transmissible by descent. *Crozier's Appeal*, 90 Pa. St. 384, 35 Am. Rep. 666. And may not be exercised, therefore, for the benefit of her heirs or creditors. *Williamson v. Nelson* (Tenn. Ch.), 62 S. W. 53; *Harding's Adm'r v. Harding's Ex'r*, 140 Ky. 277, 130 S. W. 1098; *Nordquist's Estate*, 114 Minn. 329, 131 N. W. 323. Nor be exercised by the widow herself, when insane. *Pinkerton v. Sargent*, *supra*; *Young v. Boardman*, 97 Mo. 181, 10 S. W. 48. Nor exercised in her behalf by the sole act of her guardian or committee, unless authority so to elect has been given by express statutory enactment; since the election of one of two things, when only one can be chosen, is a judicial and not a ministerial act. *Kennedy v. Johnston*, 65 Pa. St. 451, 3 Am. Rep. 650; *Van Steenwyck v. Washburn*, 59 Wis. 483, 17 N. W. 289, 48 Am. Rep. 532. An election may be made for an insane widow, however, by a court of equity having jurisdiction over the widow, or by her guardian or committee acting with the sanction of such a court. *Hardy v. Richards*, 98 Miss. 625, 54 South. 76, 35 L. R. A. (N. S.) 1210; *Trower v. Spady* (Va.), 83 S. E. 1049; *Orphans Home v. Seago*, 155 Ill. App. 76. And in some states the probate court is authorized by statute to make the election. See *Andrews v. Bassett*, 92 Mich. 449, 52 N. W. 743, 17 L. R. A. 296. In such cases, where the guardian or committee refuses to petition a court of equity to elect for the insane widow, the court will make the election in proceedings brought by next friend. *In re Conner's Estate*, 254 Mo. 65, 162 S. W. 252, 49 L. R. A. (N. S.) 1108.

In making the election the court is guided by considerations for the benefit of the widow without regard to what may be to the advantage of the heirs. *Penhallow v. Kimball*, 61 N. H. 596; see *Gaster v. Gaster*, 90 Neb. 529, 134 N. W. 235. It has been held, however, that the interests of the heirs may be taken into consideration also in making the election. *In re Stevens' Estate*, 163 Iowa 364, 144 N. W. 644. But where a petition is filed praying for leave to elect, and the avowed purpose of such election is not to benefit the widow, but is to divert away from the testator's grandchildren part of their inheritance, it should be refused.

WORKMEN'S COMPENSATION ACT—PERSONAL INJURY—ACCIDENT ARISING OUT OF THE EMPLOYMENT.—A foreman of a gang of laborers, after remonstrating with a Greek laborer as to his manner of work without avail ordered him to put down his shovel and cease work. The Greek refused and the foreman attempted to take the shovel from him, but was thrown down by the Greek, who with his teeth inflicted severe lacerations which were followed by blood poisoning, and thereby resulting in serious injuries to the foreman. *Held*, the foreman was injured by an accident "arising out of and in the course of the employment." *Western Indemnity Co. v. Pillsbury* (Cal.), 151 Pac. 398. See NOTES, p. 232.